

Testimony before the Senate

Committee on Commerce, Science and Transportation

Subcommittee on Oceans, Atmosphere and Fisheries

By

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Mr. Chairman and members of the Subcommittee, I am Ray Kammer. My experience with the National Marine Fisheries Service includes an assignment as the Deputy Under Secretary of NOAA from 1990 to 1992, leadership of a management review in 2000 and current service as a consultant to a panel of the National Academy of Public Administration that is reviewing the NMFS under a charge from the House and Senate Appropriations Committees. I am appearing before this Subcommittee in my personal capacity and only I am responsible for my opinions.

Overview of Recent History of US Fisheries

In 1976, Congress passed the Magnuson Fishery Conservation and Management Act. The objective of this Act was to resuscitate a declining US fishing industry and supplant foreign fishermen in US waters. The Act was hugely successful. The collaboration of the eight Regional Councils and the NMFS succeeded in expanding US commercial and recreational fishing and making the fisheries in the 200-mile exclusive economic zone a US prerogative.

By the mid 1980's over fishing began to occur. The over fishing and the consequent actions to remediate created concerns over conservation, the environment, and economic and social impacts on communities and fishermen. These concerns manifested themselves in legislative instructions to the NMFS which culminated in the Sustainable Fisheries Act that renamed the MFCMA as the Magnuson-Stevens Act and established more explicit standards for national resource protection and added standards for consideration of community impacts, bycatch and protection of essential fish habitats.

Management Review of NMFS

The challenges that the NMFS must address are daunting. In 2000, the Deputy Under Secretary of NOAA, Scott Gudes, and the Assistant Administrator for NMFS, Penny Dalton, asked me to lead a management review of the NMFS. The Executive Director of

the study was Carol Ballew. We were asked to review the adequacy of funding, the ability of NMFS to comply with its mandates and the impact of litigation on NMFS operations. We found the following:

- The NMFS budget situation is misleading—NMFS has grown but management has little flexibility to direct funds into needed supporting research
 - The NMFS Operations Research and Facilities budget grew from \$282M in FY 1996 to \$421M in FY 2000
 - In that same time period external grants grew by 100%
 - The non-salmon internal budget grew by 7.2%--NMFS missed \$32M in adjustments to base
 - Programs, Projects and Activities doubled to \$105M in 113 separate instructions
- The causes of NMFS' management difficulties are not complex
 - No adjustments to base
 - Lack of support for non-salmon base
 - Litigation costs
 - Increased workload
 - Lack of effective planning
 - Weak budget and management processes
- Litigation is hamstringing NMFS
 - Before 1997 NMFS had 16 open cases—it was over 110 in 2000
 - 70% of FMP's (25 of 41) have EIS' over 5 years old
 - 5% of ESA listings are complete—have a recovery plan, have critical habitat designation, have delisting criteria
 - The costs of increased litigation are not funded—this diverts scarce staff and other resources into court cases
 - NMFS is the fourth largest regulatory regime in government (EPA, FAA, FCC)
 - No uniformity in creation of regulatory records across the 8 NMFS regions
 - Paperwork is ad hoc—it is not unheard of to find conflicting opinions in a regulatory case file
- Each regulatory decision endures eleven levels of review within NOAA

We concluded that the NMFS does not have the people, funds or flexibility to conduct a credible program consistent with its mission and recommended six major steps:

- Adopt a base budget analysis system based on the recommendations of a 2000 NAPA study
- Institute a system of regular external, independent program reviews

- Bring constituents into planning and budgeting
- Prepare for upcoming retirements
- Fill vacant SES positions
- Increase resources by \$186 for adjustments to base (\$32M), socio-economic analysis (\$10M), modern regulatory system (\$15M), stock assessments (\$100M), MMPS/ESA recovery (\$10M), enforcement (\$10M), and observers and cooperative statistics (\$9M).

Partially in response to the recommendations of this report, Congress increased the NMFS major budget account by \$214M in FY-2001. NMFS has developed and continues to develop and implement plans to respond to the recommendations of the report.

Management Priorities for NMFS

In my view, success for NMFS will be achieved through incremental progress on many fronts. I recommend that NMFS management focus on five actions that will simplify and inform NMFS operations:

1. Continue to organize and conduct program and budget reviews. The 50% increase in FY 2001 requires that priorities be set and implemented.
2. Establish a regulatory calendar and make it available over the Internet to the public. The complexities of the NMFS procedures make them impenetrable to their constituents.
3. Implement simplified and uniform regulatory procedures in all eight regions and reduce the layers of review. There is a Regulatory Streamlining Project now under way in NMFS.
4. Establish routine and continuing analysis of all litigation to identify trends and opportunities for improvement. The NAPA study now underway will present NMFS with a baseline of litigation analysis.
5. Establish an annual program of external review of NMFS programs and operations, perhaps by NAPA and NRC. External review can inform NMFS management of opportunities for improvement.

Simplification of NMFS Legislative Instructions

I can identify 7 major laws that have a significant impact on NMFS operations:

1. Magnuson-Stevens Act as amended by the Sustainable Fisheries Act
2. National Environmental Policy Act
3. Marine Mammal Protection Act
4. Endangered Species Act
5. Coastal Zone Management Act
6. Marine Protection, Research and Sanctuaries Act

7. Regulatory Flexibility Act

While each of these laws is important, each has a separate focus and a separate legislative mandate. There are more than 100 pieces of substantive legislation mandating NMFS activities, as well as Executive Orders governing the NMFS regulatory process. The reconciliation of these laws and instructions falls to NMFS with a sense from the different laws that each assignment is a top priority. I believe that NMFS' ability to conserve the fisheries, protect the environment, promote US economic interests, encourage recreational fishing and address socio-economic issues would be enhanced, if Congress were to make a statement of its priorities for the US fisheries and simplify the procedures for achieving US fisheries objectives.

My recommendation is that the Congress, the Administration, the States, the Councils and interested parties representing the environment, US commercial fishing and recreational fishing begin discussing priorities among US fishery objectives with a view towards providing legislative guidance.

Mr. Chairman, members of the Committee, thank you for inviting me to testify.